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Supreme Court, U.S.
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No. 02-1399

In The

Supreme Court of the United States

D.A. and E.A.,

Petitioners,

v.

STATE OF UTAH,

Respondent.

On Petition For Writ Of Certiorari To The Utah Supreme Court

GUARDIAN AD LITEM'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Utah Supreme Court properly determined that the state had exerted personal jurisdiction over the parents and status jurisdiction over the abandoned child.

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Authorities	iii
Reasons for Denying the Petition for Writ of Certiorari	1
I. The Utah Supreme Court held that the trial court had personal jurisdiction as well as status jurisdiction over the parties	1
II. The petitioners establish no state conflicts	2
Conclusion	3

TABLE OF AUTHORITIES

Page

STATE CASES:

In re A.E.H., 468 N.W.2d 190 (Wis.), *cert. denied*, 502 U.S. 925 (1991) 3

In re Doe, 926 P.2d 1290 (Haw. 1996) 2

In re Marriage of Hudson, 434 N.E.2d 107, *cert. denied*, 459 U.S. 1202 (1983) 3

In re Vernon R., 991 P.2d 986 (N.M. Ct. App. 1999) 2

Wenz v. Schwartze, 598 P.2d 1086 (Mont. 1979), *cert. denied*, 444 U.S. 1071 (1980) 3

STATUTES:

Utah Code Ann. §§ 78-45c-108, -201 3

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE UTAH SUPREME COURT HELD THAT THE TRIAL COURT HAD PERSONAL JURISDICTION AS WELL AS STATUS JURISDICTION OVER THE PARTIES.

The petitioners erroneously assert that the Utah Supreme Court held that the parents had not established minimum contacts and, thus, there was no personal jurisdiction over them. *See* Petitioners' Brief at i. 5, 8, 9. That is not the case.

The Utah Court of Appeals agreed that the parents had established minimum contacts. App. 47 ¶ 13. The Utah Supreme Court, in turn, refused to consider whether the parents had minimum contacts. Pet App. 10 n.5 & App. 18 ¶ 29. However, the Utah Supreme Court emphasized that the state had exerted personal jurisdiction over the parents pursuant to Utah law and that such exertion comported with the due process requirements of the Fourteenth Amendment. Pet. App. 7 ¶ 14.

Because the Utah Supreme Court declined to reach the issue of whether the parents had established minimum contacts, that issue is not before this Court. Moreover, the Utah Supreme Court squarely held that the state had exerted personal jurisdiction over the parents and that such jurisdiction comported with federal due process requirements.

Therefore, the Utah Supreme Court did not extend status jurisdiction as the sole basis for jurisdiction of the termination petition. That issue is not ripe for address by this Court. This Court should therefore deny the petition for certiorari.

II. THE PETITIONERS ESTABLISH NO STATE CONFLICTS.

The petitioners allege that the Utah Supreme Court decision conflicts with at least two state opinions. Petitioners' Brief at 6-7 (citing *In re Doe*, 926 P.2d 1290, 1299 (Haw. 1996) and *In re Vernon R.*, 991 P.2d 986, 988-89 (N.M. Ct. App. 1999)). The *Vernon R.* case involved one parent trying to cut out another parent from collecting on a money judgment in favor of the couple's child. 991 P.2d at 986-87. The New Mexico Court of Appeals specifically declined to reach the issue of whether status jurisdiction applies to custody or child welfare cases: "we are not necessarily averse to the possibility of extending in rem or CCJA jurisdiction in cases of termination in contemplation of adoption or in custody cases, where the child's best interests is clearly at issue, this case falls in neither of those categories."

Neither does the *Doe* case conflict with the present case. *Doe* turned on the fact that the State of Hawaii had an "insufficient" interest in the case "to justify the exercise of personal jurisdiction" over the Philippine mother because the child was in the state solely as a result of the proceedings. 926 P.2d at 1299 (state cannot exercise jurisdiction over child whose presence is fortuitous and transitory). In *Doe*, the Child's presence in Hawaii was "as a consequence of Father's journey to the nearest location in the United States where he could resolve his problem with the federal government." 926 P.2d at 1297. Not coincidentally, the resolution of *Doe* comports also with the subject matter jurisdiction requirements of the UCCJEA which requires a "maximum contacts" test to determine which forum should adjudicate a child's status and which

requires that the parent receive due process, but not necessarily personal jurisdiction. *See, e.g.*, Utah Code Ann. §§ 78-45c-201 & -108.

Finally, this Court has denied certiorari over similar cases, letting stand decisions holding that states may assert status jurisdiction over abandoned children. *Wenz v. Schwartze*, 598 P.2d 1086 (Mont. 1979), *cert. denied*, 444 U.S. 1071 (1980); *In re Marriage of Hudson*, 434 N.E.2d 107, 117-19, *cert. denied*, 459 U.S. 1202 (1983); *In re A.E.H.*, 468 N.W.2d 190 (Wis.), *cert. denied*, 502 U.S. 925 (1991).

CONCLUSION

The Utah Supreme Court relied on personal jurisdiction as well as status jurisdiction. Moreover, there is no conflict in state decisions over subject matter jurisdiction and personal jurisdiction regarding termination cases. This Court should therefore deny the petition for writ of certiorari.

Respectfully submitted,

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